

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
GOVERNMENT OF THE UNITED STATES
AND THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
RELATING TO THE PRINCIPLES GOVERNING COOPERATION
IN RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT
AND LOGISTICS SUPPORT OF DEFENSE CAPABILITY
(SHORT TITLE: US/UK RECIPROCAL DEFENSE PROCUREMENT MOU)

INTRODUCTION

The Government of the United States of America (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments,

Noting that the Governments established and have maintained understandings relating to reciprocal defense procurement since 1975,

Noting that the Governments' defense cooperation relationship is separately characterized by the Declaration of Principles for Defense Equipment and Industrial Cooperation signed on February 5, 2000, which is independent of but complementary to this MOU,

Are seeking to achieve greater cooperation in research, development, production, procurement, and logistics support of defense capability in order to:

- Make the most cost-effective and rational use of their respective industrial, economic and technological resources consistent with national laws, regulations, policies, and procedures;

- Promote the widest possible use of standard or

interoperable equipment; and

-Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the signatories to this Memorandum of Understanding (MOU).

In an effort to further the above aims, the Governments have sought to reach certain understandings and this Memorandum sets out the understandings in regard to the guiding principles governing mutual cooperation in the production and purchasing of defense capability.

The Governments intend the understanding of this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments recognize the efforts of European governmental defense cooperation organizations to enhance collaboration on defense capability programs by more comprehensive and systematic arrangements among the individual member nations. They, therefore, understand that in the event of a possible conflict between understandings entered into between one of these organizations and the USG, and this MOU, the signatories hereto, will consult with a view to amending this MOU.

The Governments will regard this MOU as being part of the arrangements, in the larger context, for cooperation between Europe and North America within the Alliance.

The Agreement Concerning Defence Cooperation Arrangements of 27 May 1993 between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland will apply to this MOU and all annexes.

SECTION 1

Applicability

1.1 This MOU covers the acquisition of defense capability by the Department of Defense of the USG and the Ministry of Defence of HMG through:

1.1.1 Research and development;

1.1.2 Procurements of defense equipment and supplies; and

1.1.3 Procurements of defense services.

1.2 This MOU does not cover:

1.2.1 Construction, alteration or repair of public works or public facilities; or

1.2.2 Construction material supplied under construction contracts.

SECTION 2

Principles Governing Reciprocal Defense Purchasing

2.1 Both Governments intend to facilitate the mutual flow of the defense procurement for their armed services, aiming at a long term equitable balance in their exchanges, consistent with their national laws, regulations, policies, and procedures and taking into consideration the capability of their defense industrial and research and development bases.

2.2 This MOU is intended to cover areas in which, in the view of both Governments, bilateral co-operation could be achieved in research, development, production, procurement and logistics support of defense capability. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD), the European governmental defense cooperation organizations and the Senior NATO Logisticians Conference (SNLC).

2.3 In order to facilitate a more integrated and stronger industrial base, each Government intends to provide firms of the other country with treatment no less favorable than that accorded to domestic enterprises.

2.4 To facilitate these objectives the following principles will be observed by the Governments:

2.4.1 The Governments will identify and nominate for consideration by each other, defense items (defense equipment or defense services) believed suitable to satisfy their respective requirements. The Governments will decide between them the purchases to which this MOU will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis. However, unless otherwise prescribed by applicable laws, regulations, policies, or procedures, the

purchasing Government may choose whether to obtain the items on a government-to-government or industry-to-government basis.

2.4.2 In the interests of standardization and the effective utilization of scarce resources, each Government will, to the extent practical, adopt qualified defense items that have been developed or produced in the other country.

2.4.3 The Governments will regularly discuss measures to limit any adverse effects of offsets and other regulations or policies on the defense industrial base of each country.

2.4.4 Each Government recognizes and expects that the other uses sound processes for requirements definition, acquisition, and procurement and contracting, and that these processes both facilitate and depend on transparency and integrity in the conduct of procurements. Each Government will ensure its processes are consistent with the implementing procedures at Annex I, which will incorporate the following:

(i) Consistent with national laws and regulations, offers or proposals will be evaluated on the basis of non-discrimination on the grounds of place of manufacture, without applying price differentials under 'Buy National' laws and regulations, and without applying the costs of import duties;

(ii) Full and equitable consideration will be given to all qualified sources in each other's country and each country will give full and equitable consideration to all applications for qualification by sources in the other country, consistent with applicable laws, regulations, policies, and procedures;

(iii) Offers or proposals will be required to satisfy requirements of the purchasing office including performance, quality, delivery and costs;

(iv) Provisions for duty-free certificates and related documentation.

2.4.5 To facilitate potential or established programs, including purchases set up in implementation of this MOU, the Governments understand that consistent with their laws, regulations, policies, and procedures and subject to privately owned proprietary rights, each Government will, so far as it is

able, release to the other and to its agents information and technology the providing Government believes is necessary to facilitate such programs.

2.4.6 Arrangements regarding the placement of contracts by one government on behalf of the other government will be negotiated on a case-by-case basis and reflected in each individual cooperative project arrangement.

2.4.7 Nothing in this MOU serves to prevent the implementation of necessary export control provisions in individual cooperative project arrangements.

2.4.8 Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistics support of defense equipment purchased through procurements covered by this MOU. Both Governments will make their defense logistics systems and resources available for this purpose as required and jointly decided.

2.4.9 Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense organizations to implement the provisions of this MOU.

2.4.10 The Governments, through their appropriate representatives, will consult concerning the effective implementation of this MOU. Such consultations will be conducted on the basis of Section 3 of this MOU.

SECTION 3

Implementation Machinery

3.1 Each Government will, as required, review the understandings established under this MOU in light of any subsequent changes to its national laws, regulations, policies and procedures, and will consult with the other Government to jointly decide whether this MOU should be amended.

3.2 The Under Secretary of Defense for Acquisition, Technology, and Logistics, in conjunction with the Under Secretary of Defense for Policy and in coordination, as appropriate, with other DoD offices, will be the responsible authority in the United States of America.

3.3 The Chief of Defence Procurement, MoD, under the guidance of MoD Ministers and in consultation with the Chief of Defence Logistics, the Deputy Chief of Defence Staff (Equipment Capability) and the Head of the Defence Export Services, will be the responsible authority in the United Kingdom of Great Britain and Northern Ireland.

SECTION 4

Industrial Involvement

4.1 Implementation of this MOU will entail full industrial involvement. Notwithstanding the Governmental procedures to implement this MOU, it will be the basic responsibility of the industries in each country to identify and market their respective capabilities and to carry out the necessary actions to bring about industrial involvement.

4.2 Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate guidance on its implementation.

4.3 The Governments will arrange that their respective procurement and requirements offices are made familiar with the principles and objectives of this MOU and will, consistent with their normal practice and procedures with their country's industry, assist sources in the country of the other Government to obtain information concerning proposed purchases, necessary qualification and appropriate documentation.

SECTION 5

Security, Release of Information and Visits

5.1 Any classified information or material exchanged under the provisions of this MOU will be used, transmitted, stored, handled and safeguarded in accordance with the 1961 US-UK General Security Agreement, as amended, including the Security Implementing Arrangement dated 27 January 2003 thereto.

5.2 Each Government will take all lawful steps available to it to keep information exchanged in confidence under this MOU free from disclosure under any legislative provision, unless the other Government consents to such disclosure.

5.3 To assist in providing the desired protection, each Government will mark such information furnished to the other with a legend indicating the country of origin, the security classification, the conditions of release, the fact that the information relates to this MOU and, if unclassified, that it is furnished in confidence.

5.4 Information provided by either Government to the other in confidence, and information produced by either Government pursuant to this MOU requiring confidentiality will be safeguarded in a manner that ensures its proper protection from unauthorized disclosures.

5.5 The Governments will maintain full and comprehensive lists of Technical Exchange Arrangements pursuant to this MOU to which both are signatories. These Arrangements will be taken into account when applications from the Government of either country including Government supported industry applications, are made for the disclosure of information relating to cooperation under the provisions of the MOU.

5.6 Bearing in mind the close cooperation of the two Governments to ensure the maintenance of NATO's technological superiority, they confirm that in considering each cooperative project carried out under this MOU, they will pay specific attention to exercising control both bilaterally and within multinational bodies over the transfer to third parties of technologies and associated manufacturing processes involved in defense programs. Within such a framework each Government may authorize release of information generated solely within its territory exclusively at its own cost and which does not incorporate any information provided by the other Government. Release of controlled information, know-how or articles will require the prior written permission of the providing Government.

5.7 A security review of all cooperative programs carried out under this MOU will be conducted annually by the appropriate national authorities to ensure Government and Industry compliance with the security regulations of the respective Governments for the protection of classified and unclassified but sensitive technology.

5.8 In accordance with the 1961 UK/US General Security Agreement, as amended, including the Security Implementing

Arrangement dated 27 January 2003, each Government will permit visits to its establishments, agencies and laboratories, and contractor industrial facilities, by employees of the other Government or by employees of the other Government's contractor(s), provided that the visit is authorized by both Governments and the employees have appropriate security clearances and a need-to-know.

5.9 All visiting personnel will comply with security and export control regulations of the host country. Any information disclosed or made available to visitors will be treated as if supplied to the Government sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

SECTION 6

Duration

6.1 This MOU, including Annexes I, II, III, IV, V, VI, and VII listed below, will come into effect upon signature by the Governments and will terminate on 1 January 2015.

- I Implementing Procedures
- II Mutual Acceptance of Test and Evaluation
- III Reciprocal Audits of Contracts and Subcontracts
- IV Logistics Support of Defense Equipment
- V Reciprocal Government Quality Assurance
- VI Meeting National Defense Requirements - Security of Supply
- VII Flow of Technical Information

6.2 If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 2015, any such proposal will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to decide upon such actions as may be necessary to alleviate problems that may result from termination.

6.3 It is intended that contracts entered into as a result of the cooperation fostered by the understandings in this MOU will not be terminated solely because of the termination of this MOU.

6.4 Any difference of view regarding the interpretation or application of this MOU will be resolved by consultation between the two Governments and will not be referred to a national or international tribunal or third party for settlement.

SECTION 7

Amendments and Implementing Arrangements

7.1 Any changes or additions to this MOU, including its Annexes, that create or amend substantive benefits or commitments involving any Government are subject to approval at the same level as the MOU itself.

7.2 Implementing arrangements regarding the provisions of this MOU, including its Annexes, may be negotiated by appropriate subordinate officials of the responsible authority of each Government. Such arrangements may involve procedural matters, administrative direction and guidance, but will not create any substantive benefits or commitments involving any Government. No provision of any implementing arrangement will be inconsistent with this MOU. In the event of conflict, this MOU will be controlling.

The foregoing represents the understandings reached between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland upon the matters referred to herein.



Donald Rumsfeld

For the Government of the
United States

Date: DEC 16 2004



Geoffrey Hoon

For the Government of the
United Kingdom of Great
Britain and Northern Ireland

Date: 13th December 2004

ANNEX I

IMPLEMENTING PROCEDURES

SECTION 1

Introduction

This Annex sets forth the procedures by which the Governments will implement the Memorandum of Understanding on Cooperation in Research and Development, Production, Procurement and Logistics Support of Defense Capability (hereinafter referred to as 'the MOU').

SECTION 2

General Procedures

2.1 Each Government will consider for its defense requirements qualified defense items (defense equipment or defense services) developed and/or produced in the other country. In addition, the responsible purchasing agencies of each Government will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

2.2 It will be the responsibility primarily of industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations of the purchasing country.

2.3 Each Government will, consistent with normal practice and procedures with their own country's industry, ensure that the responsible Government authorities in each country will assist sources in the other country by responding promptly to requests for appropriate information concerning:

2.3.1 Plans and programs for production, logistics support and acquisition of defense equipment and defense services.

2.3.2 Requirements for the qualification of sources.

2.3.3 Specifications, quality assurance standards and other appropriate documentation.

2.4 Full and equitable consideration will be given to all qualified industrial and/or Government sources in both the US and UK, in accordance with the policies and criteria of the respective purchasing agencies. In addition, each Government will give full and equitable consideration to all applications for qualification by sources in the other country, in accordance with the laws, policies, regulations and procedures of the purchasing Government and, in the case of HMG, relevant and applicable European Union regulations.

2.5 Offers will be required to satisfy requirements including performance, quality, supportability, delivery and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and consistent with national laws and regulations, full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

2.6 Consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying price differentials under 'Buy National' laws and regulations and without applying the cost of import duty.

2.7 Consistent with national laws and regulations and, in the case of HMG relevant and applicable European Union regulations, provision will be made for duty-free entry certificates and related documentation.

2.8 This MOU is not intended to and does not create any substantive authority to authorize the export of defense articles or defense services, including technical data, controlled on the UK Military List or the United States Munitions List. Further, any export subject to the UK Export Control Act or the US Arms Export Control Act and the International Traffic in Arms Regulations must be compliant with such Acts and such Regulations.

SECTION 3

Actions

3.1 Both Governments will review and, where considered appropriate and necessary, revise regulations, policies and

procedures to ensure that the principles and objectives of the MOU, which are intended to be compatible with the broad aims of NATO Rationalization, Standardization and Interoperability, are taken into account.

3.2 Within 90 days of the effective date of this MOU, each Government will provide to the other copies of policy guidance and administrative procedures distributed within their respective defense organizations to implement the provisions of this MOU.

3.3 Recognizing that factors such as delivery date requirements, the interests of security, and the timely conduct of the contracting process must be considered, the following arrangements will be made to ensure free and full competition for the award of contracts:

3.3.1 Each Government will ensure that as a minimum the following are familiar with the principles, objectives and provisions of the MOU:

- its respective defense planning, programming, and procurement offices.

- its respective research and development offices.

- its respective agencies and industries responsible for the development, procurement, and logistics support of defense items (defense equipment and defense services).

3.3.2 Each Government may assist industries in its country to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial involvement in the implementation of the MOU.

3.3.3 Each Government will consider defense items (defense equipment and defense services) offered by the Government or industry of the other country as candidates for their respective requirements. In meeting their procurement requirements, the Governments will, as far as practicable, ensure that the industries of each country are afforded adequate time to be able to participate in the production and procurement process.

3.3.4 Both Governments acknowledge the potential benefits that can accrue from international competition and the

contribution it can make to the fulfillment of the aims set out in the Introduction Section of this MOU. Each Government will ensure that those defense items (defense equipment and defense services) excluded from consideration under the arrangements made as a result of this MOU, for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Each Government will designate a central point of contact who will review, upon request, items to which mobilization base restrictions have been applied. Periodically, representatives of each Government will meet to review the policy underpinning the items excluded from consideration under the MOU arrangements with the aim of permitting the purchase of each others defense products.

SECTION 4

Procurement Procedures

4.1. To the extent practicable, each Government will publish or have published, in a generally available periodical, a notice of proposed purchases in accordance with national rules or practices. The notice will contain:

4.1.1 Subject matter of the procurement.

4.1.2 Time limits set for the submission of offers or requests to participate in the bid-invitation process.

4.1.3 Addresses to which offers or requests to participate should be sent.

4.2 The contracting authorities will provide copies of invitations to tender/solicitations for proposed purchases in accordance with national rules or practices. Such invitations will contain the following information:

4.2.1 The nature and quantity of the products or services to be supplied.

4.2.2 Whether the procedure is by sealed bids, or negotiation.

4.2.3 The criteria on which the award is to be based, such as by lowest bid price or otherwise.

4.2.4 Any delivery date.

4.2.5 The address and closing date for submitting bids as well as the language or languages in which they must be submitted.

4.2.6 The address of the contracting authority responsible for awarding the contract and providing any appropriate information to potential suppliers.

4.2.7 Any economic and/or technical requirements, financial guarantees and information required from suppliers.

4.2.8 The amount and terms of any sum payable for tender/solicitation documents.

4.3 Any "invitations to tender"/"solicitations" will be published in adequate time to enable interested suppliers to signify their interest, and will allow adequate time for response consistent with user requirements.

4.4 Tenderers/offerors will be promptly notified as to the outcome of the tender/solicitation process.

4.5 A supplier will, on request, be provided with pertinent information concerning the reasons why he was not allowed to participate in a procurement or was not awarded a contract.

4.6 The Governments will maintain procedures for the examination of complaints arising in connection with any phase of the procurement process, and will exchange pertinent information on these procedures.

SECTION 5

Administration

5.1 Each Government will designate representatives who will meet as needed to review progress in implementing the MOU. The representatives will discuss research and development, production, procurement and logistics support needs of each country and the likely areas of co-operation; and consider any other matters relevant to the MOU. The agenda will be jointly decided upon and made final 30 days prior to the date set for the meeting.

5.2 The Governments will exchange statistics on the monetary value of defense contracts each awards to firms of the other country. An annual summary will be prepared on a basis to be jointly decided. The summary will be reviewed annually.